Volume 4 Number 2 (2026)
July-December 2026
Page:2329-2347

Journal of Creative Power and Ambition (JCPA)
https://edujavare.com/index.php/jcpa
E-ISSN: 3031-4054
DOI: 10.70610/jcpa.v4i02.1900

Application of the Business Judgment Rule Doctrine to ESG Investment Decisions

Ogan Muhammad[1], Anggara Akbar Hasibuan[2]
[1]Universitas Jayabaya, Jakarta, Indonesia
[1] Sekretariat Jenderal DPR RI, Indonesia

Email: muhammadogan807@gmail.com, aa_recht27@yahoo.com

Article history Submitted: 2026/07/27; Revised: 2026/07/31; Accepted: 2026/08/04

Abstract

The implementation of Environmental, Social, and Governance (ESG) investments often causes short-term profitability declines in corporations. This normative-juridical research aims to analyze directors' legal protection against such financial risks through the Business Judgment Rule (BJR) doctrine. The findings conclude that BJR excludes directors' personal liability provided the decision meets key procedural parameters: good faith, absence of conflict of interest, informed decision-making, and proper purpose. Short-term profit decline is reconstructed as a legitimate business risk for corporate longevity rather than managerial negligence, provided it is free from greenwashing

Keywords Business Judgment Rule, ESG Investment, Directors' Liability, Stakeholder Primacy.

INTRODUCTION

The paradigm shift in global corporate governance has moved from a *shareholder primacy* orientation toward *stakeholder primacy*. Under the traditional paradigm, the primary objective of corporations focused on maximizing shareholder profits, which often encouraged short-term and unsustainable business practices (Ventura, 2025). However, global demands for sustainability have encouraged the integration of *Environmental, Social, and Governance* (ESG) principles into companies' core strategies (Tkalenko, 2025a, 2025b). ESG principles transform corporate objectives by requiring companies to balance the interests of shareholders with those of other stakeholders, including communities and the environment (Bridoux & Stoelhorst, 2023). In Indonesia, this shift is reflected juridically through various regulations requiring the internalization of ESG principles, including Law Number 32 of 2009 on Environmental Protection and Management, Government Regulation Number 47 of 2012 on the Social and Environmental

Responsibility of Limited Liability Companies, and Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector. Consequently, ESG is no longer merely a voluntary initiative but has evolved into a legal obligation and binding governance standard (Binder, 2024; Fachri, 2024).

The implementation of ESG-based investment policies presents legal and managerial dilemmas for directors. Investments in sustainable infrastructure, energy transition, and social programs generally require substantial capital expenditure at the initial stage (Moussa & Elmarzouky, 2023). These upfront costs empirically have a direct impact on short-term profitability and may potentially reduce dividend payments to shareholders (Dogan et al., 2026; Hampl & Linnertová, 2026). Wen et al. (2025) also note that although ESG performance can facilitate access to long-term financing, short-term financial pressures remain a reality that management must confront. This condition places directors in a vulnerable position because they must execute sustainability obligations mandated by regulations while simultaneously facing shareholder pressure to maintain short-term profitability and dividend distributions.

The vulnerability of directors becomes increasingly evident in light of the liability provisions under Indonesian corporate law. Article 97 paragraph (3) of Law Number 40 of 2007 on Limited Liability Companies (Company Law) expressly provides that each member of the Board of Directors is personally fully liable for losses suffered by the company if the individual is at fault or negligent in carrying out their duties. A short-term decline in profits or share value resulting from the allocation of funds to ESG investments may be misinterpreted by shareholders as negligence or mismanagement. If shareholders file a lawsuit based on such financial losses, directors may face the threat of personal liability, potentially placing their personal assets at risk. Therefore, legal protection for directors who make risky business decisions in pursuit of ESG compliance has become a critically important issue.

Previous literature has examined the relationship between ESG, directors' duties, and legal protection. Binder (2024) analyzes how directors' duties have evolved in the ESG era and emphasizes that directors now bear obligations that extend beyond merely creating shareholder value. Spercel (2024), in his study of the *Business Judgment Rule* within stakeholder capitalism, argues that the BJR should be adapted to protect directors who take non-financial interests into consideration. Furthermore, Yan (2025) highlights the importance of operationalizing stakeholder governance through a legal framework that provides certainty for directors. Nevertheless, these studies largely focus on *common law* jurisdictions or on theoretical concepts of stakeholder capitalism from a global perspective.

A significant *legal gap* exists in the corporate law literature in Indonesia. There has been no comprehensive doctrinal analysis of the extent to which the *Business Judgment Rule* (BJR), as adopted under Article 97 paragraph (5) of the Company Law, can shield directors from shareholder lawsuits when conflicts arise between short-term profitability and long-term ESG sustainability obligations. Indonesia's current ESG regulations remain dispersed across various sectoral regulations and have not yet been codified under a single comprehensive legal framework (Fachri, 2024). Consequently, the standards of directors' prudence in making ESG investment decisions that sacrifice short-term profits remain unclear. The absence of clear guidelines concerning the application of the BJR in the ESG context creates legal uncertainty for directors in executing sustainability mandates.

Based on this juridical gap, this study aims to analyze the position of *Business Judgment Rule Theory* as an instrument for excluding directors' personal liability for short-term declines in profitability arising from the implementation of ESG-based investment policies. Through a juridical-normative approach, this article specifically examines the doctrinal boundaries of the application of this theory in assessing the validity of business decisions oriented toward sustainability. The legal construction resulting from this study is expected to provide legal certainty for directors in implementing ESG mandates while simultaneously encouraging the acceleration of corporate sustainability transitions in Indonesia.

METHODS

This study constitutes normative legal research that examines legal norms, principles, and doctrines to address juridical issues arising from the conflict between *Environmental, Social, and Governance* (ESG) investment obligations and shareholders' profitability expectations (Hamzani et al., 2024). The study does not rely on empirical field data but focuses on a systematic analysis of statutory regulations and corporate law doctrines to identify the principles of fairness in directors' liability (Rado et al., 2023). This approach was selected because the issue of protecting directors in relation to ESG investment decisions is fundamentally a matter of normative synchronization and doctrinal construction rather than merely a sociological phenomenon occurring in the courtroom.

To address the legal issues, this study employs two primary approaches, namely the statutory approach and the conceptual approach. The statutory approach critically examines Articles 92, 97, and 98 of Law Number 40 of 2007 on Limited Liability Companies (Company Law), along with Financial Services Authority Regulation Number 51/POJK.03/2017 concerning the Implementation of Sustainable Finance. Meanwhile, the conceptual approach is used to examine scholarly perspectives on the doctrines of *Fiduciary Duty* and the *Business Judgment Rule* (BJR). The data sources are obtained through a literature study encompassing primary legal materials in the form of statutory regulations, secondary legal materials derived from accredited literature and academic journals, and tertiary legal materials such as legal dictionaries (Sumiarni, 2024).

The technique for analyzing legal materials is conducted using a prescriptive-qualitative method with a deductive line of reasoning. The author positions the BJR doctrine as a juridical evaluative matrix for assessing the validity of directors' actions involving substantial capital expenditure allocations for ESG compliance. The analysis begins with a major premise consisting of legal norms and the principle of prudence, which is then juxtaposed with a minor premise concerning the reality of short-term financial risks, thereby producing prescriptive conclusions regarding the parameters of legal protection for directors (Tanjung & Harahap, 2024). This method is expected to formulate clear doctrinal boundaries so that directors are not automatically held personally liable for short-term declines in profits arising from sustainability mandates.

FINDINGS AND DISCUSSION

Reorientation of Fiduciary Duty: The Shift from Shareholder Primacy to Stakeholder Primacy

The paradigm shift in corporate governance from shareholder primacy toward stakeholder primacy requires a fundamental reorientation of the fiduciary duty doctrine borne by directors (Bridoux & Stoelhorst, 2023). In the Indonesian corporate law framework, this fiduciary obligation is rooted in Articles 92 and 97 of Law Number 40 of 2007 on Limited Liability Companies (Company Law). Article 92 paragraph (1) of the Company Law imperatively requires directors to manage the company in the interests of, and in accordance with, the company's purposes and objectives. This provision serves as the normative foundation for the duty of loyalty, requiring directors to prioritize the interests of the business entity over personal interests or those of particular shareholder groups (Binder, 2024).

Furthermore, Article 97 paragraph (2) of the Company Law stipulates that company management must be carried out in good faith and with full responsibility. The elucidation of this provision interprets "full responsibility" as the obligation to pay careful and diligent attention to the company. In corporate law doctrine, this obligation is translated into the duty of care, which requires directors to make decisions based on adequate information, rational considerations, and an orientation toward the company's continuity and survival (Spercel, 2024). Therefore, the implementation of fiduciary duty can no longer be measured solely by the directors' ability to generate short-term dividends, but also by their ability to properly manage comprehensive risks that threaten the company's existence.

(a) Rationalization of ESG Investment: Risk Mitigation Rather than Philanthropy

The decision of directors to allocate significant capital expenditure to Environmental, Social, and Governance (ESG) infrastructure often triggers resistance from shareholders because it may reduce short-term profitability. However, such resistance is based on a conceptual misunderstanding that classifies ESG as a charitable or philanthropic activity. From both legal and economic perspectives, ESG investment constitutes an essential long-term business risk management instrument for corporate longevity (Zammit & Grima, 2025).

Directors who ignore ESG factors essentially fail to fulfill their duty of care because they expose the company to material and foreseeable risks. These risks include administrative sanctions resulting from environmental violations, litigation initiated by affected communities, and loss of access to financing from institutional investors that increasingly require sustainability compliance (Goel et al., 2023). Accordingly, expenditures on ESG programs are not social grants detached from business strategy, but rather a rational cost of doing business intended to mitigate regulatory and reputational risks. Such decisions are fully consistent with directors' obligations to protect corporate assets and value from external shocks arising from the transition toward a sustainable economy.

(b) Reinterpreting "Corporate Interest" within the Sustainability Framework

The phrase "corporate interest" in Article 92 paragraph (1) of the Company Law is often narrowly interpreted by shareholders as the maximization of annual net profits. This rigid textual interpretation has become outdated and is no longer relevant to the realities of contemporary regulation. Indonesia's legal system has systematically expanded the meaning of "corporate interest" through various regulatory instruments that internalize sustainability principles.

First, Government Regulation Number 47 of 2012 concerning the Social and Environmental Responsibility of Limited Liability Companies explicitly establishes social and environmental responsibility as a legal obligation, particularly for companies related to natural resources. Article 5 paragraph (2) of Government Regulation 47/2012 stipulates that the realization of the social and environmental responsibility budget is calculated as a company expense. The state's recognition of social and environmental expenditures as "corporate expenses" normatively demonstrates that maintaining harmony with external stakeholders constitutes an inherent part of the corporate interest itself.

Second, in the financial and capital market sectors, Financial Services Authority Regulation Number 51/POJK.03/2017 requires issuers and public companies to prepare sustainability reports. This reporting obligation changes the parameters of corporate performance from a single financial indicator into comprehensive indicators encompassing environmental, social, and governance pillars. Failure to meet ESG reporting standards may not only trigger administrative sanctions but also create exposure to allegations of greenwashing, potentially damaging the company's reputation in the market. Therefore, "corporate interest" should legally be interpreted as encompassing the protection of long-term value, compliance with regulatory obligations, and preservation of the company's license to operate within society.

(c) Exclusion of Directors' Liability through the Business Judgment Rule

The greatest legal dilemma for directors lies in the threat of personal liability stipulated in Article 97 paragraph (3) of the Company Law, which provides that directors are personally fully liable for corporate losses when such losses result from their fault or negligence. Declining profits or reduced dividends resulting from ESG investment may easily become the basis for lawsuits by minority shareholders alleging negligence that has harmed the company. However, corporate law provides a protective mechanism through the Business Judgment Rule (BJR) doctrine, which is codified in Article 97 paragraph (5) of the Company Law.

Article 97 paragraph (5) of the Company Law provides that directors cannot be held liable for corporate losses if they can prove four cumulative elements. First, the loss was not caused by their fault or negligence (letter a). In the ESG context, a short-term decline in profits constitutes a logical consequence of a transition strategy rather than managerial negligence. Second, the directors managed the company in good faith and with prudence in the interests of the company (letter b). As previously analyzed, ESG investment decisions supported by climate and regulatory risk assessments represent a strong manifestation of the duty of care and duty of loyalty in safeguarding the entity's going concern.

Third, there was no direct or indirect conflict of interest (letter c). This element emphasizes that ESG decisions must be made objectively, without self-dealing or personal interests on the part of directors. Fourth, the directors took measures to prevent the occurrence or continuation of losses (letter d). Investment in environmentally friendly infrastructure and transparent governance constitutes a preventive measure to avoid substantial future losses resulting from environmental penalties, consumer boycotts, or revocation of business licenses.

If directors can transparently document the ESG investment decision-making process, demonstrate that it was data-driven, and establish that it was approved through legitimate corporate mechanisms, the BJR can function as a strong legal shield. Courts should not intervene in or retrospectively evaluate directors' business judgments merely because such policies sacrifice short-term profitability, provided that the decision-making process satisfies standards of prudence and loyalty to the long-term sustainability interests of the company (Ventura, 2025). Thus, the shift toward stakeholder primacy through ESG investment does not place directors in a legally improper position; rather, it may constitute evidence of comprehensive fulfillment of their fiduciary duty in the contemporary corporate environment.

Parameters of Business Judgment Rule Theory in ESG Business Decisions

The business judgment rule (BJR) doctrine functions as a protective mechanism in the form of procedural immunity for directors when making risk-bearing business decisions. In the common law tradition, the BJR creates a presumption that directors act on the basis of adequate information, in good faith, and in the best interests of the company (Beebeejaun & Bissessur, 2024). Courts apply the doctrine of abstention to refrain from intervening in directors' business judgments as long as there is no gross negligence, bad faith, or conflict of interest (Gerner-Beuerle, 2021). Judges do not replace directors' business judgments with their own judicial assessments merely because the decision results in short-term financial losses.

However, the construction of the BJR under Law Number 40 of 2007 on Limited Liability Companies has a somewhat different procedural character. Article 97 paragraph (3) of the Company Law essentially establishes personal liability when corporate losses result from fault or negligence. Legal protection emerges through the defense mechanism under Article 97 paragraph (5) of the Company Law, which requires directors to prove good faith, prudence, the absence of conflicts of interest, and preventive action. Although the initial burden of proof rests on directors, the substance of these four defense elements doctrinally adopts BJR parameters as protection against judicial second-guessing (Ruparčič, 2024). Therefore, ESG investment decisions that sacrifice short-term profitability must be rigorously assessed through the four fundamental elements of the BJR to determine whether directors are entitled to legal protection.

(a) Good Faith: Absence of Bad Faith and Hidden Motives

The first element is good faith, which requires directors to make decisions without malicious intent or hidden personal motives. Article 97 paragraph (2) of the Company Law requires company management to be conducted in good faith and with full responsibility. In the context of ESG investment, good faith is satisfied when the allocation of capital expenditure for sustainable infrastructure is based on an honest belief that such action is necessary to mitigate climate risks and comply with regulations (Mejia, 2026). BJR protection will be lost if it is proven that the ESG decision merely serves as a cover for environmental violations or facilitates corporate criminal conduct. Courts will not grant procedural immunity when fraud or illegality is embedded in the decision-making process. Directors must be able to demonstrate that the primary motivation behind ESG investment is the protection of the business entity from systemic risks rather than personal managerial image-building.

(b) No Conflict of Interest: Integrity of the Duty of Loyalty

The second element requires the absence of a conflict of interest as a manifestation of the duty of loyalty. Article 97 paragraph (5) letter c of the Company Law explicitly requires directors to demonstrate that they have no direct or indirect conflict of interest in management actions resulting in losses. In the implementation of ESG projects, this parameter examines the integrity of directors in selecting environmentally friendly technology vendors, sustainability consultants, or strategic partners. Directors lose BJR protection if they are proven to have received hidden commissions, held shares in ESG service providers, or directed contracts toward personally affiliated entities (Beebeejaun & Bissessur, 2024). The absence of conflicts of interest ensures that short-term sacrifices in profitability are genuinely intended to protect the business entity rather than enrich corporate officers. Every ESG transaction should therefore be conducted on an arm's-length basis, transparently, and with approval from independent corporate organs.

(c) Due Care / Informed Decision: Information-Based Prudence as the Foundation of Business Rationality

The third element represents the core of BJR protection, namely due care or prudence based on an informed decision. The elucidation of Article 97 paragraph (2) of the Company Law interprets "full responsibility" as the obligation to pay careful and diligent attention to the company. Corporate law doctrine emphasizes that negligence occurs when directors make decisions hastily, without adequate investigation, or while disregarding material information (Brejdak, 2021). ESG investment decisions satisfy the due care requirement when directors can demonstrate feasibility studies, environmental impact assessments (AMDAL), and financial risk analyses related to the energy transition. Courts will assess the completeness of procedures and the depth of risk analysis undertaken before directors approve ESG budgets. As long as directors rely on scientific data, recommendations from specialized committees, and recognized reporting standards, courts should not characterize declining dividends as managerial negligence. Failure to conduct proper due diligence concerning environmental risks, by contrast, may constitute a breach of the duty of care that exposes directors to personal liability.

(d) Proper Purpose: Lawful Purpose—Business Continuity versus Greenwashing

The fourth element requires decisions to be made for a lawful purpose (proper purpose), namely the continuity and sustainability of the company (corporate longevity). Article 92 paragraph (1) of the Company Law links every directors' policy to the company's purposes and objectives. Under the stakeholder primacy paradigm, a lawful purpose is no longer limited to short-term profit maximization but also encompasses business resilience against sustainable finance regulations and global market expectations (Peari, 2023). ESG investment qualifies as a proper purpose when it serves as an adaptation strategy to maintain the company's license to operate and access to green financing. Conversely, BJR protection does not apply if the ESG decision constitutes greenwashing, namely a cosmetic effort to mislead investors without substantive improvements in environmental and social governance (Ahmad et al., 2023). Greenwashing may constitute bad faith that undermines stakeholder trust and defeats the presumption of the validity of directors' actions. Courts may regard greenwashing as misleading market conduct that excludes directors from BJR protection.

These four elements form a comprehensive matrix for evaluating the validity of ESG business decisions in Indonesia. As long as directors can document compliance with good faith, absence of conflicts of interest, information-based prudence, and a lawful purpose, the BJR can operate effectively as a procedural shield. Short-term financial losses arising from the implementation of ESG policies should not automatically be characterized as losses caused by directors' fault or negligence.

Conversely, failure to invest in ESG infrastructure may itself generate personal liability if directors are deemed negligent in managing regulatory and reputational risks that threaten the company's future existence. Accordingly, integrating BJR parameters into ESG decision analysis provides legal certainty for directors in implementing sustainability mandates. Judges and shareholders should assess the quality of the decision-making process (process-oriented) rather than merely attributing blame based on short-term financial outcomes (outcome-oriented). This approach ensures that directors who act rationally and with an orientation toward corporate sustainability are protected against unjustified criminalization or civil claims.

Exclusion of Directors' Personal Liability for Short-Term Financial Risks

(a) Paradigm Conflict: The Construction of "Corporate Loss" in Classical Doctrine versus ESG Reality

The analysis of directors' liability for short-term declines in profitability resulting from Environmental, Social, and Governance (ESG) policies must begin by examining the normative construction of "corporate loss" under Article 97 paragraph (3) of Law Number 40 of 2007 on Limited Liability Companies. Historically, corporate law literature and agency theory have dominated interpretations of directors' obligations. Jensen and Meckling (308), in their classical agency theory, emphasize that the relationship between directors and shareholders is a principal-agent relationship oriented primarily toward maximizing the financial wealth of capital owners. Consequently, traditional doctrine in Indonesian judicial practice and corporate law literature tends to interpret declining net profits or reduced dividends as initial indications (prima facie evidence) of managerial fault or negligence (Chatamarrasjid, 2000; Fuady, 2008). This textual interpretation places directors in a defensive position, where every negative fluctuation in short-term financial statements automatically generates suspicions of a breach of the duty of care.

However, this juridical paradigm, which is oriented toward short-term financial outcomes, is now confronted by regulatory disruption and global market demands. Contemporary literature on stakeholder capitalism emphasizes that sacrificing short-term profits for sustainability investment is not a managerial anomaly but rather an existential risk mitigation strategy aimed at ensuring corporate longevity (Bridoux & Stoelhorst, 2023; Parmar et al., 2010). In this context, a normative gap (legal gap) emerges if Article 97 paragraph (3) of the Company Law continues to be interpreted rigidly without considering the unique characteristics of ESG-based capital expenditure, which may only generate returns in the medium to long term. Therefore, this section analyzes how the business judgment rule (BJR) functions as an instrument of reconstruction, transforming the perspective of "loss caused by negligence" into that of a "foreseeable business risk."

(b) Reconstructing "Loss" as "Foreseeable Business Risk" in Corporate Planning Instruments

To determine whether a decline in profits resulting from ESG investment can be excluded from directors' personal liability, corporate law provides a defense mechanism through Article 97 paragraph (5) letter a of the Company Law, which requires that the loss not be caused by directors' fault or negligence. In the context of ESG investment requiring substantial initial capital expenditure, a decline in net profit during the current financial year may constitute a rational mathematical consequence rather than a managerial anomaly. If the projected decline in profits has been transparently presented in the Corporate Work Plan and Budget (RKAP), approved by the Board of Commissioners, and authorized by the General Meeting of Shareholders (GMS), the financial decline may legally be transformed from an "unexpected loss" into an "accepted business risk" (Beebeejaun & Bissessur, 2024; Suescún De Roa, 2013). An RKAP containing an analysis of the financial impact of energy transition or community empowerment programs functions as evidence that directors have satisfied the informed decision standard. Judges or shareholders bringing claims should not rely on hindsight bias to characterize such decisions as negligent because the decisions were made on the basis of adequate information and corporate approval at the relevant time. Accordingly, integrating ESG risks into corporate planning constitutes an essential prerequisite for the optimal operation of the BJR in excluding directors' personal liability for negative short-term financial fluctuations.

(c) Internalization of Financial and Environmental Sectoral Regulations as Validation of Proper Purpose

In assessing the proper purpose element, courts and relevant parties can no longer rely on corporate law doctrine in isolation but must consider binding sectoral regulations alongside it. For financial institutions, issuers, and public companies, Financial Services Authority Regulation Number 51/POJK.03/2017 concerning the Implementation of Sustainable Finance expressly requires the preparation of sustainability reports and the integration of ESG risks into business strategies. The existence of this regulation legally transforms ESG investment from a "risky business discretion" into a matter of regulatory compliance. When directors allocate company funds to establish ESG reporting infrastructure or finance the transition of credit portfolios toward green sectors, such actions satisfy the proper purpose element because they are directed toward avoiding administrative sanctions, fines, and even the revocation of business licenses by competent authorities. Accordingly, shareholder claims alleging that such expenditures constitute waste that reduces short-term profits may be challenged through the BJR. Directors need only demonstrate that the decision was adopted in direct response to the mandate of POJK 51/2017 and the demands of global reporting standards. In this context, the BJR functions as a safe harbor protecting directors from allegations of breaching the duty of care, because compliance with state regulations constitutes strong evidence that directors acted prudently and in the long-term best interests of the company. Directors' inability to adapt to sustainable finance regulations may instead constitute negligence capable of triggering personal liability, making ESG investment a legally protected necessity.

(d) Intersection of Environmental and Corporate Law: ESG as a Legal Obligation

BJR protection for ESG investment decisions becomes stronger when viewed through the intersection of corporate law and environmental law. Law Number 32 of 2009 concerning Environmental Protection and Management introduces the principle of strict liability for companies conducting businesses or activities involving hazardous and toxic materials or creating serious environmental threats. Financial risks arising from environmental lawsuits, administrative penalties, or ecosystem restoration obligations can potentially exceed the value of corporate assets and trigger bankruptcy. Within this framework, ESG investment aimed at improving environmental operational standards, managing waste, and reducing carbon emissions is not merely a voluntary choice but a legal obligation to mitigate exposure to strict liability. Directors who fail to allocate budgets for environmental compliance may be accused of gross negligence because they allow the company to operate under extreme legal risks (Gerner-Beuerle, 2021; Zammit & Grima, 2025). Conversely, when directors decide to reduce short-term dividends to finance environmentally friendly technological upgrades, such action constitutes a strong manifestation of the duty of care. The BJR should protect directors against shareholder claims focused solely on declining dividends because the court can recognize that the preventive action was undertaken to avoid substantially greater and potentially catastrophic future losses. Environmental Impact Assessment (AMDAL) obligations and sustainability reporting requirements imposed by sectoral regulations further reinforce that ESG expenditure constitutes a legitimate cost of doing business protected by the BJR doctrine.

(e) Testing the Four BJR Elements against ESG Investment Policies

To ensure that the BJR can function as an effective legal shield, directors must be able to demonstrate compliance with four fundamental elements aligned with Article 97 paragraph (5) of the Company Law. First, the good faith element. Directors must demonstrate that ESG policies were adopted as rational responses to regulatory pressures and global market demands rather than as personal philanthropy using corporate funds (Neri-Castracane 92). Second, the no conflict of interest element, as mandated by Article 97 paragraph (5) letter c of the Company Law. Large ESG budgets can be particularly vulnerable to self-dealing. Directors lose BJR protection if they are proven to have directed contracts for environmentally friendly technology or sustainability consulting services to affiliated entities without conducting reasonable due diligence (Gerner-Beuerle, 2021). Third, the due care or information-based prudence element. Short-term declines in profits can only be protected by the BJR when ESG investment decisions are supported by feasibility studies, environmental audits, and comprehensive financial risk analyses. Gross negligence may arise when directors approve ESG projects worth billions of rupiah without a rational analytical basis, ultimately burdening the company’s cash flow without contributing value to business resilience (Brejdak 265). Fourth, the proper purpose element, referring to Article 92 paragraph (1) of the Company Law. The lawful purposes of ESG investment include maintaining the company’s license to operate, avoiding administrative sanctions, and securing access to green financing. As long as these four elements are cumulatively satisfied, the BJR can effectively block civil claims from shareholders who feel harmed by short-term dividend reductions.

(f) Limits to the Loss of BJR Protection: Analysis of Vitiating Triggers

Although the BJR provides strong procedural protection, it is not an absolute license to immunity from legal liability. The BJR becomes vitiated and cannot exclude directors' personal liability when ESG investment is proven to constitute merely a false sustainability pledge (greenwashing) without a rational analytical basis or is used as a cover for affiliate transactions that harm the company. A detailed analysis of these limits is crucial to prevent sustainability issues from being abused as instruments for white-collar crime.

The first trigger that eliminates BJR protection is greenwashing unsupported by rational analysis. Greenwashing essentially constitutes misrepresentation toward the public, investors, and regulators regarding the company's environmental and social performance (Bodellini, 2023; Wang et al., 2025). From a corporate and capital market law perspective, when directors allocate corporate funds to greenwashing campaigns without substantive improvements in business operations, such conduct cannot be classified as a proper purpose. Furthermore, the absence of rational analysis underlying sustainability claims demonstrates a serious breach of the duty of care. Directors may be deemed grossly negligent for wasting corporate assets on cosmetic activities that provide no protection against business risks but instead expose the company to litigation and regulatory sanctions arising from misleading information (Yu et al., 2020; Zhang et al., 2026). Therefore, if a short-term decline in profits is caused by manipulative greenwashing campaign costs, directors cannot rely on the BJR and may be subject to personal liability under Article 97 paragraph (3) of the Company Law.

The second trigger that automatically eliminates BJR protection is the use of ESG budgets as a cover for harmful affiliate transactions. Sustainability initiatives often involve the procurement of new technologies, construction of green infrastructure, or specialized consulting services involving substantial financial values that may be difficult for non-experts to audit. This creates opportunities for directors acting in bad faith to engage in self-dealing or direct contracts toward family- or associate-owned companies at unreasonable prices or with inflated mark-ups (Lin et al., 2023; Tong et al., 2024). Such conduct constitutes a clear violation of the duty of loyalty and directly undermines the cumulative requirement under Article 97 paragraph (5) letter c of the Company Law concerning the absence of conflicts of interest. When the motivation behind ESG investment is not climate risk mitigation or regulatory compliance but personal or group enrichment, the entire BJR defense collapses. Courts may apply a substance over form analysis and remove the protection afforded to directors, requiring them to compensate the company personally and jointly and severally.

(g) Burden of Proof and the Safe Harbor Mechanism in Indonesian Courts

The application of the BJR within Indonesia's civil law system also has significant implications for the allocation of the burden of proof in court. Unlike the common law system, where a presumption of regularity may automatically favor directors from the outset, Article 97 paragraph (5) of the Company Law places the initial burden of proof on directors to demonstrate that they have fulfilled the four elements of the defense. However, once directors successfully present documentary evidence such as board meeting minutes discussing climate risk analysis, independent environmental audit reports, and RKAP approval by the GMS, the burden of proof may effectively shift toward the claimant or shareholder. The claimant must then overcome the presumption of good faith by demonstrating specific evidence of fraud, conflict of interest, or gross negligence. This burden-shifting mechanism is particularly important in ESG investment cases because the technical complexity of sustainability projects may be difficult for ordinary shareholders to understand. Courts should not readily accept unilateral shareholder claims that a renewable energy project that has not generated profits within its first two years constitutes negligence. As long as directors can present an audit trail demonstrating that the decision was based on scientific projections and expert consultation, courts may apply the doctrine of abstention and refrain from intervening in such business decisions. Thus, the BJR creates a safe harbor that allows directors to undertake strategic risks necessary for sustainability innovation without being continuously threatened by speculative litigation.

(h) Constitutional Context and the Philosophy of Sustainable Development in Indonesia

Furthermore, the paradigm shift toward stakeholder primacy and BJR protection for ESG investment in Indonesia is not rooted solely in Western corporate law doctrine but also has a strong constitutional foundation. Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia expressly mandates that the national economy be organized with an environmental perspective and on the basis of sustainability. This constitutional mandate is operationalized through various legal instruments, including the Environmental Protection and Management Law and the Company Law. Therefore, when directors make decisions that sacrifice short-term profits to prevent environmental degradation or maintain social harmony with surrounding communities, they are essentially implementing the constitutional mandate applicable to corporate entities operating in Indonesia. BJR protection in this context serves as a juridical instrument that aligns the micro-interests of shareholders with the state's broader interest in sustainable development. Indonesian courts should recognize that challenging directors for rational ESG decisions may effectively penalize compliance with constitutional sustainability objectives. Thus, the BJR not only protects directors' personal assets but also helps ensure that corporations remain aligned with national objectives of social justice and environmental sustainability for future generations.

Based on the comprehensive analysis above, this study formulates a theoretical synthesis that the application of the BJR in corporate disputes involving ESG investment requires a paradigm shift in judicial evaluation from an outcome-oriented approach toward a process-oriented approach. The outcome-oriented approach often used by shareholders bringing claims tends to be unfair because it relies on hindsight bias by assessing legitimate business decisions based on fluctuating short-term financial outcomes. In contrast, a process-oriented approach requires courts to examine the integrity of the decision-making process undertaken by directors at the time the ESG policy was implemented (Jatna et al., 2025; Keay et al., 2020).

This study confirms that the business judgment rule doctrine can exclude directors' personal liability for short-term declines in corporate financial profits arising from the implementation of ESG-based business policies, provided that directors can demonstrate that such declines constitute the realization of a foreseeable business risk that was rationally anticipated and measured in corporate planning documents (RKAP), and that the four BJR elements—good faith, no conflict of interest, due care/informed decision, and proper purpose—are cumulatively satisfied. Indonesian corporate law, through a progressive interpretation of Articles 92 and 97 of the Company Law in conjunction with sectoral regulations such as POJK 51/2017 and Government Regulation 47/2012, provides sufficient legal space for directors to innovate and transition toward sustainable business models. BJR-based legal protection ensures that directors are not constrained by fear of personal lawsuits whenever they must make difficult decisions that sacrifice today's dividends to protect the company from future existential risks. Thus, the BJR functions not only as a legal shield for directors but also as a juridical catalyst for accelerating Indonesia's corporate ecosystem toward sustainable business practices and holistic stakeholder responsibility (Ahmad et al., 2023; Bainbridge, 2004).

CONCLUSION

This study concludes that the Business Judgment Rule (BJR) doctrine can normatively shield directors from personal liability regarding short-term profit declines resulting from Environmental, Social, and Governance (ESG) investments. From a legal standpoint, such profit reductions do not constitute managerial negligence but rather fall under the category of legitimate and foreseeable business risk. This protection applies provided the directors meet four procedural parameters: good faith, the absence of conflicts of interest, informed decision-making, and a proper purpose aimed at the entity's long-term viability. Thus, the BJR serves as a procedural shield against shareholder lawsuits—a protection that is automatically forfeited if the ESG investment is proven to be an act of greenwashing or a cover for related-party transactions.

Based on this synthesis, the study identifies two strategic implications. First, for directors, procedural compliance is the most critical legal mitigation tool. Directors must document ESG risk deliberations, feasibility studies, and the necessary corporate approvals within the Company's Work Plan and Budget (RKAP). This comprehensive audit trail serves as the primary evidence required to invoke BJR protection in court. Second, for lawmakers, there is an urgent need to clarify the boundaries of "stakeholder primacy" when revising the Limited Liability Company Law or its implementing regulations. The absence of explicit parameters regarding the legitimacy of sacrificing short-term profits for the sake of sustainability continues to foster legal uncertainty. Such normative clarification is essential to ensure directors have legal certainty and are not held hostage by the threat of litigation while executing sustainability transition mandates.

REFERENCES

Ahmad, H., Yaqub, M., & Lee, S. H. (2023). Environmental-, social-, and governance-related factors for business investment and sustainability: a scientometric review of global trends. Environment, Development and Sustainability 2023 26:2, 26(2), 2965–2987. https://doi.org/10.1007/S10668-023-02921-X

Bainbridge, S. M. (2004). The Business Judgment Rule as Abstention Doctrine - ProQuest. Vanderbilt Law Review, 57(1), 81–130. https://www.proquest.com/openview/bf298c2872729a2773b1fd3a60dfaf79/1?pq-origsite=gscholar&cbl=49232

Beebeejaun, A., & Bissessur, P. (2024). The Business Judgment Rule as a Protective Armor for Directors' Responsibilities: A Comparative Study Among Mauritius, United Kingdom, and United States. Statute Law Review, 45(2). https://doi.org/10.1093/SLR/HMAE028

Binder, J. H. (2024). Leading Wherever They Want? CSR, ESG, and Directors' Duties. In J.-H. Binder, K. Hopt, & T. Kuntz (Eds.), Corporate Purpose, CSR, and ESG (pp. 217–246). Oxford University Press. https://doi.org/10.1093/OSO/9780198912576.003.0011

Bodellini, M. (2023). Greenwashing and the misapplication of articles 8 and 9 of the Sustainable Finance Disclosure Regulation. ERA Forum, 24(1), 27–42. https://doi.org/10.1007/S12027-023-00739-8/METRICS

Brejdak, J. (2021). Czy prezes spółki powinien być filozofem? O zasadzie business judgment rule, która doczekała się swojej kodyfikacji w Polsce. PRAWO i WIĘŹ, 2021(4 (38)), 256–271. https://doi.org/10.36128/PRIW.VI38.172

Bridoux, F., & Stoelhorst, J. W. (2023). Stakeholder governance: on overcoming the problems in the traditional narrative of capitalism in: Research Handbook on Corporate Governance and Ethics. In Research Handbook on Corporate Governance and Ethics (pp. 25–47). Edward Elgar Publishing. https://www.elgaronline.com/edcollchap/book/9781800880603/book-part-9781800880603-10.xml

Chatamarrasjid. (2000). Menyingkap tabir perseroan : kapita selekta hukum perseroan = Piercing the corporate veil. Citra Aditya Bakti. https://books.google.com/books/about/Menyingkap_tabir_perseroan.html?id=5vrzAAAACAAJ

Dogan, M. A., Guloglu, B., & Aydemir, R. (2026). Sustainability and profitability: The

ESG impact on eurozone emission-intensive sectors. Borsa Istanbul Review, 26(3), 1–16. https://doi.org/10.1016/J.BIR.2026.100807

Fachri, F. K. (2024, March 20). Belum Diatur Khusus, Regulasi ESG Tersebar di Berbagai Peraturan. Hukum Online. https://www.hukumonline.com/berita/a/belum-diatur-khusus--regulasi-esg-tersebar-di-berbagai-peraturan-lt65f9d2f8dde80?spm=a2ty_o01.29997173.0.0.47f155fbOm44sm

Fuady, M. (2008). Hukum Perusahaan dalam Paradigma Hukum Bisnis (Berdasarkan UU Nomor 40 Tahun 2007 (III). Citra Aditya Bakti. https://books.google.co.id/books?hl=en&lr=&id=eZ0sDwAAQBAJ&oi=fnd&pg=PR11&dq=Fuady,+Munir.+Hukum+Perusahaan+dalam+Paradigma+Hukum+Modern.&ots=YqQfdmmfrv&sig=4bT4sD2iOwwjcZOX2XuEahl1dV8&redir_esc=y#v=onepage&q=Fuady%2C%20Munir.%20Hukum%20Perusahaan%20dalam%20Paradigma%20Hukum%20Modern.&f=false

Gerner-Beuerle, C. (2021). The duty of care and the business judgment rule: A case study in legal transplants and local narratives. In A. Afsharipour & M. Gelter (Eds.), Comparative Corporate Governance (pp. 220–241). Edward Elgar Publishing Ltd. https://doi.org/10.4337/9781788975339.00020

Goel, C., Bassi, P., & Pankaj. (2023). A systematic review of esg investing and climate change as a sustainable practice in the insurance industry. In K. Sood, S. Grima, P. Young, E. Ozen, & B. Balusamy (Eds.), The Impact of Climate Change and Sustainability Standards on the Insurance Market (pp. 221–235). wiley. https://doi.org/10.1002/9781394167944.CH14;PAGE:STRING:ARTICLE/CHAPTER

Hampl, F., & Linnertová, D. V. (2026). Does Context Matter? ESG-Contingent Effects of Board Cultural Diversity on Corporate Capital Investments. Corporate Social Responsibility and Environmental Management, 33(1), 236–259. https://doi.org/10.1002/CSR.70175

Hamzani, A. I., Widyastuti, T. V., Khasanah, N., & Rusli, M. H. M. (2024). Implementation approach in legal research. International Journal of Advances in Applied Sciences, 13(2), 380–388. https://doi.org/10.11591/IJAAS.V13.I2.PP380-388

Indonesia. Peraturan Menteri Badan Usaha Milik Negara Nomor PER-2/MBU/03/2023 tentang Pedoman Tata Kelola dan Kegiatan Korporasi Signifikan Badan Usaha Milik Negara. Berita Negara Republik Indonesia Tahun 2023 Nomor 262.

Indonesia. Peraturan Menteri Sosial Nomor 9 Tahun 2020 tentang Tanggung Jawab

Sosial dan Lingkungan Badan Usaha. Berita Negara Republik Indonesia Tahun 2020 Nomor 967.

Indonesia. Peraturan Otoritas Jasa Keuangan Nomor 51/POJK.03/2017 tentang Penerapan Keuangan Berkelanjutan bagi Lembaga Jasa Keuangan, Emiten, dan Perusahaan Publik. Lembaran Negara Republik Indonesia Tahun 2017 Nomor 169.

Indonesia. Peraturan Pemerintah Nomor 47 Tahun 2012 tentang Tanggung Jawab Sosial dan Lingkungan Perseroan Terbatas. Lembaran Negara Republik Indonesia Tahun 2012 Nomor 89, Tambahan Lembaran Negara Republik Indonesia Nomor 5305.

Indonesia. Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal. Lembaran Negara Republik Indonesia Tahun 2007 Nomor 67, Tambahan Lembaran Negara Republik Indonesia Nomor 4724.

Indonesia. Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 140, Tambahan Lembaran Negara Republik Indonesia Nomor 5059.

Indonesia. Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan. Lembaran Negara Republik Indonesia Tahun 2023 Nomor 4, Tambahan Lembaran Negara Republik Indonesia Nomor 6845.

Indonesia. Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Lembaran Negara Republik Indonesia Tahun 2007 Nomor 106, Tambahan Lembaran Negara Republik Indonesia Nomor 4756.

Jatna, R. N., Firmansyah, Hasbullah, & Razak, M. U. B. A. (2025). Strengthening the Business Judgment Rule in Indonesia: Lessons from Malaysia. Journal of Sustainable Development and Regulatory Issues (JSDERI), 3(3), 568–589. https://doi.org/10.53955/JSDERI.V3I3.157

Keay, A., Loughrey, J., McNULTY, T. E. R. R. Y., Okanigbuan, F., & Stewart, A. (2020). Reviewing Directors’ Business Judgements: Views from the Field. Journal of Law and Society, 47(4), 639–665. https://doi.org/10.1111/JOLS.12257;PAGE:STRING:ARTICLE/CHAPTER

Lin, X., Zhu, H., & Meng, Y. (2023). ESG greenwashing and equity mispricing: Evidence from China. Finance Research Letters, 58, 104606. https://doi.org/10.1016/J.FRL.2023.104606

Mejia, S. (2026). In Defense of an “Ethics Judgment Rule.” Business Ethics Quarterly, 1–32. https://doi.org/10.1017/BEQ.2025.10102

Moussa, A. S., & Elmarzouky, M. (2023). Does Capital Expenditure Matter for ESG

Disclosure? A UK Perspective. Journal of Risk and Financial Management 2023, Vol. 16, Page 429, 16(10), 448. https://doi.org/10.3390/JRFM16100429

Parmar, B. L., Freeman, R. E., Harrison, J. S., Wicks, A. C., Purnell, L., & de Colle, S. (2010). Stakeholder Theory: The State of the Art. The Academy of Management Annals, 4(1), 403–445. https://doi.org/10.1080/19416520.2010.495581

Peari, S. (2023). The combination of environmental, social and corporate governance factors has an important place in business today. Alternative Law Journal, 48(4), 252–257. https://doi.org/10.1177/1037969X231205912

Rado, R. H., Betaubun, R. M. N., Alputila, M. J., & Parera, Z. (2023). Food law in Indonesia has a criminal perspective that is oriented towards food security. IOP Conference Series: Earth and Environmental Science, 1253(1), 1–9. https://doi.org/10.1088/1755-1315/1253/1/012069

Ruparčič, J. (2024). Business Judgement Rule and Corporate Social Responsibility. In M. Pucelj & R. Bohinc (Eds.), Bridging Human Rights and Corporate Social Responsibility: Pathways to a Sustainable Global Society (pp. 101–126). IGI Global Scientific Publishing. https://doi.org/10.4018/979-8-3693-2325-0.CH005

Spercel, T. (2024). THE BUSINESS JUDGMENT RULE IN STAKEHOLDER CAPITALISM. Northwestern Journal of International Law and Business, 44(3), 343–411. https://dx.doi.org/10.2139/ssrn.4785473

Suescún De Roa, F. (2013). The Business Judgment Rule En Los Estados Unidos: Una Regla Con Dimensión Procesal Y Fuerza Sustantiva [The Business Judgment Rule in America: A Rule with Procedural Dimension and Substantive Force]. Vniversitas, 127, 341–371. https://doi.org/10.1144/Javeriana.VJ127.bjre

Sumiarni, E. (2024). Historical Study Of Marriage Law Between The Norms And The Problematics [Estudo Histórico Do Direito Do Casamento Entre As Normas E A Problemática Resumo][Estudio Histórico De La Ley Matrimonial Entre Las Normas Y La Problemática]. Revista de Gestao Social e Ambiental, 18(5), 1–19. https://doi.org/10.24857/RGSA.V18N5-012

Tanjung, A. S., & Harahap, J. F. (2024). Restorative Justice Regulations in Reforming Criminal Procedure Law. Daengku: Journal of Humanities and Social Sciences Innovation, 4(1), 155–161. https://doi.org/10.35877/454RI.DAENGKU2359

Tkalenko, N. (2025a). Introduction to ESG Approach. In M. Bednárová & Kullapa. Soratana (Eds.), Environmental, Social, and Governance (ESG) Investment and Reporting (pp. 1–16). Springer Science+Business Media. https://doi.org/10.1007/978-3-031-84235-1_1/SAVE-RESEARCH

Tkalenko, N. (2025b). Social and Corporate Governance Factors in ESG Investing. In

Michaela. Bednárová & Kullapa. Soratana (Eds.), Environmental, Social, and Governance (ESG) Investment and Reporting (pp. 77–92). Springer Science+Business Media. https://doi.org/10.1007/978-3-031-84235-1_4/SAVE-RESEARCH

Tong, Y., Lau, Y. W., & Binti Ngalim, S. M. (2024). Do pilot zones for green finance reform and innovation avoid ESG greenwashing? Evidence from China. Heliyon, 10(13), e33710. https://doi.org/10.1016/J.HELIYON.2024.E33710

Ventura, L. (2025). The "Philanthropic" Duties of the Board of Directors in the New Paradigm of Responsible Capitalism. In Philanthropy: Multidisciplinary Perspectives (1st ed., pp. 145–188). Taylor and Francis. https://doi.org/10.4324/9781003546986-11/PHILANTHROPIC-DUTIES-BOARD-DIRECTORS-NEW-PARADIGM-RESPONSIBLE-CAPITALISM-LIVIA-VENTURA

Wang, L., Tang, R., & Zhou, X. (2025). Financial crime risks in environmental, social, and governance (ESG) investment: Perspectives on greenwashing and false disclosure. Finance Research Letters, 85, 107856. https://doi.org/10.1016/J.FRL.2025.107856

Wen, J., Farooq, U., Alomair, A., & Al Naim, A. S. (2025). ESG performance and capital investment: Understanding the role of bank financing in BRICS countries. Research in International Business and Finance, 79, 103058. https://doi.org/10.1016/J.RIBAF.2025.103058

Yan, M. (2025). Operationalising stakeholder governance: some lessons from China's new Company Law. Journal of Corporate Law Studies, 25(1), 211–245. https://doi.org/10.1080/14735970.2025.2503032

Yu, E. P. yi, Luu, B. Van, & Chen, C. H. (2020). Greenwashing in environmental, social and governance disclosures. Research in International Business and Finance, 52, 101192. https://doi.org/10.1016/J.RIBAF.2020.101192

Zammit, M. L., & Grima, S. (2025). Green investing. In Greening Our Economy for a Sustainable Future (pp. 47–55). Elsevier. https://doi.org/10.1016/B978-0-443-23603-7.00005-4

Zhang, S., Wang, N., & Liu, J. (2026). The Impact of Corporate ESG Greenwashing on Stock Price, Cash Risk. Asia-Pacific Financial Markets 2026, 1–37. https://doi.org/10.1007/S10690-026-09594-2